Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-369

FURNCO CONSTRUCTION CORPORATION,
Petitioner,

vs.

WILLIAM WATERS, SYLVESTER WILLIAMS, WILLIE G. PEARSON, VANDY HAWKINS, CURTIS GILMORE, DONALD SAMUELS, ROBERT NEMHARD, AND WILLIAM SMITH,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 3, 1977
CERTIORARI GRANTED DECEMBER 12, 1977

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977.

No. 77-369

FURNCO CONSTRUCTION CORPORATION,
Petitioner,

vs.

WILLIAM WATERS, SYLVESTER WILLIAMS, WILLIE G. PEARSON, VANDY HAWKINS, CURTIS GILMORE, DONALD SAMUELS, ROBERT NEMHARD, AND WILLIAM SMITH,
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APPENDIX

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Date	Proceedings
9–15–72	Complaint filed in Case No. 72-C-2305, U. S. District Court for the Northern District of Illinois.
10–25–72	Defendant's Answer filed.
4–10–74	Amended Answer filed.
4–11–74	Motion for Leave to File First Amended Complaint and for Leave to Add One Additional Party-Plaintiff filed and filing of First Amended Complaint.
4–16–74	Filed Defendant's Answer to First Amended Complaint.
11–11–74	Pre-Trial Order entered.
1– 8–75	Amended Pre-Trial Order entered.
1–24–75	Cause called for trial. Opening statements heard. Plaintiffs heard in part. Trial adjourned to January 27, 1975.
1–27–75	Further evidence heard for Plaintiffs. Trial adjourned to January 28, 1975.
1–28–75	Further evidence heard for Plaintiffs. Trial adjourned to January 29, 1975.
1–29–75	Further evidence heard for Plaintiffs. Plaintiffs rest. Motion of Defendant for judgment taken under advisement. Defendant's evidence heard in part. Trial adjourned to January 30, 1975.
1–30–75	Further evidence heard for Defendant. Defendant rests. Plaintiffs' rebuttal evidence heard in part. Trial adjourned to January 31, 1975.

1–31–75	Further rebuttal for Plaintiffs. Plaintiffs again rest. Parties rest. Final arguments heard. Finding for Defendant. Cause continued to February 7, 1975 for entry of findings of fact, conclusions of law and judgment.
2–10–75	Findings of Fact and Conclusions of Law entered. Judgment in favor of Defendant and against Plaintiffs entered. Case dismissed.
3–10–75	Notice of Appeal filed by Plaintiffs.
10–30–75	Oral argument before the Seventh Circuit.
3– 8–77	Decision of Seventh Circuit in 551 F. 2d 1035.
3– 8–77	Order of Seventh Circuit affirming in part and reversing in part District Court Decision and Order.
3–22–77	Petition for Rehearing with a Suggestion for Rehearing En Banc and Supporting Brief filed by Defendant.
3–28-77	Seventh Circuit Order to Plaintiffs to file Reply Brief.
4–12–77	Reply Brief filed.
6– 8–77	Seventh Circuit Order denying rehearing.
6–22–77	Seventh Circuit issuance of mandate.
7–20–77	Defendant's Motion for Stay or Recall of Mandate Pending Application for Certiorari.
7–22–77	Order of Seventh Circuit denying Motion for Stay or Recall of Mandate.
9– 3–77	Petition for Writ of Certiorari filed by Furnco Construction Corporation.
10–25–77	Respondents' Brief in Opposition to Granting of Petition for Writ of Certiorari filed.
12–12–77	Order of Supreme Court granting Petition for Writ of Certiorari.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

WILLIAM WATERS, SYLVESTER WILLIAMS, WILLIE G. PEARSON, VANDY HAWKINS, CURTIS GILMORE, DONALD SAMUELS, and ROBERT NEMHARD,

Plaintiffs,

vs.

FURNCO CONSTRUCTION CORPORATION,

Defendant.

Civil Action No. _____

COMPLAINT

Now come plaintiffs by their attorney, and allege as follows:

1. This action is brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.* (hereinafter Title VII), and the Civil Rights Act of 1866, 42 U. S. C. § 1981 (hereinafter § 1981), to redress and enjoin unlawful employment practices by the defendant in violation of those statutes. The sum in controversy exclusive of interest and costs exceeds $10,000.

2. This court has jurisdiction under § 706(f) of Title VII, 42 U. S. C. § 2000e-5(f), and 28 U. S. C. §§ 1331 and 1343.

3. The plaintiffs William Waters, Sylvester Williams, Willie G. Pearson, Vandy Hawkins, Curtis Gilmore, Donald Samuels, and Robert Nemhard, are Negro bricklayers who reside in Chicago, Illinois and are citizens of the United States.

4. Defendant Furnco Construction Corporation (hereinafter Furnco) is a mason contractor that does business in the State

of Illinois and in the County of Cook. Furthermore, defendant is an employer within the meaning of Title VII, 42 U. S. C. § 2000e (b) and (h), in that it is an industry affecting commerce and employs more than twenty-five (25) employees.

5. On or about August 1, 1971 defendant Furnco was awarded a contract to do the masonry repair work on the furnaces at Interlake Steel Corp., 10730 South Burley, Chicago, Illinois.

6. Between August 2 and August 25, plaintiffs Waters, Pearson, Hawkins, Samuels, and Gilmore went to the Interlake job site and applied for employment with defendant Furnco. On or about September 13, 1971 plaintiffs Williams and Nemhard went to the job site at Interlake Steel Corp., and applied for employment with defendant Furnco.

7. Defendant Furnco hired its first bricklayer on said Interlake Steel job on or about August 26, 1971. Between August 26 and September 15, 1971 defendant Furnco hired approximately fifteen (15) white bricklayers, but not plaintiffs. Additional white bricklayers were subsequently hired.

8. By virtue of the foregoing facts, policies, and practices defendant Furnco has discriminated against Negro bricklayers by denying said Negro bricklayers equal opportunities for employment and retention without regard to race. Defendant's conduct has prevented plaintiffs from making and enforcing employment contracts with the same freedom and on the same basis enjoyed by white bricklayers.

9. Plaintiffs have fully complied with all procedural requirements of Title VII. Timely complaints were filed with both the Illinois Fair Employment Practices Commission and the Equal Employment Opportunity Commission. In letters dated June 20, 1972 the Equal Employment Opportunity Commission advised plaintiffs of their right to sue within ninety (90) days pursuant to § 706(f-1) of Title VII.

10. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a permanent injunction is the only means for securing adequate relief. Plaintiffs are now suffering and continue to suffer irreparable injury from the defendant's policies, practices, customs and usages as set forth herein.

WHEREFORE, plaintiffs respectfully pray that this Court:

1. Issue a declaratory judgment declaring that defendant's employment policies, practices, customs and usages discriminate against Negro bricklayers in violation of Title VII and § 1981.

2. Permanently enjoin defendant from discriminating on the basis of race in its hiring and employment practices.

3. Order defendant to take affirmative action to reform its employment practices and procedures so as to abolish any vestiges of the discriminatory employment practices heretofore utilized by defendant.

4. Award plaintiffs actual damages for lost wages resulting from defendant's discriminatory policies.

5. Grant plaintiffs punitive damages in the sum of $500,000.00.

6. Grant such other and further relief as this Court deems just, including reasonable attorney's fees.

JUDSON H. MINER
Attorney for Plaintiffs

JUDSON H. MINER
DAVIS, MINER & BARNHILL
22 East Huron Street
Chicago, Illinois 60611
Telephone: 751-1170

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

WILLIAM WATERS, SYLVESTER WILLIAMS, WILLIE G. PEARSON, VANDY HAWKINS, CURTIS GILMORE, DONALD SAMUELS, and ROBERT NEMHARD,
Plaintiffs,
vs.
FURNCO CONSTRUCTION CORPORATION,
Defendant.

Civil Action
No. 72 C 2305

AMENDED ANSWER

Now comes Furnco Construction Corporation, by its Attorneys, Seyfarth, Shaw, Fairweather & Geraldson, and for its Amended Answer to the Plaintiffs' Complaint states as follows:

1-2) The Defendant admits the allegations contained in paragraphs 1 and 2 of Plaintiffs' Complaint, except that Defendant is without knowledge and information sufficient to form a belief as to whether the sum in controversy exclusive of interest and costs exceeds $10,000, and it denies each and every allegation that it in any way violated any law or committed any unlawful employment practices.

3) The Defendant admits that Plaintiffs William Waters, Sylvester Williams, Willie G. Pearson and Vandy Hawkins are Negro bricklayers, but as to each and every other allegation contained in paragraph 3 of Plaintiffs' Complaint, Defendant is without knowledge and information sufficient to form a belief as to the truth of such allegations.

4) The Defendant admits the allegations of paragraph 4 of Plaintiffs' Complaint except that while Defendant has done business in the State of Illinois and in the County of Cook, it does not presently have any business in the State of Illinois and in the County of Cook.

5) The Defendant admits the allegations contained in paragraph 5 of Plaintiffs' Complaint.

6) The Defendant denies each and every allegation contained in paragraph 6 of Plaintiffs' Complaint.

7) The Defendant admits that it hired its first bricklayer on said Interlake Steel job on or about August 26, 1971. Between August 26 and September 15, 1971, the Defendant hired approximately 12 bricklayers, of whom 2 were black, but not Plaintiffs. Subsequently, both additional white and black bricklayers were hired.

8) The Defendant denies each and every allegation contained in paragraph 8 of Plaintiffs' Complaint.

9) The Defendant admits the allegations contained in paragraph 9 of Plaintiffs' Complaint.

10) The Defendant denies each and every allegation contained in paragraph 10 of Plaintiffs' Complaint.

11) The Defendant denies each and every allegation in Plaintiffs' Complaint not herein admitted, controverted or specifically denied.

Wherefore, Defendant Furnco Construction Corporation denies that Plaintiffs are entitled to any of the relief requested, demands that Plaintiffs' Complaint be dismissed and respectfully prays that Defendant be awarded its costs, including reasonable attorney's fees, and that it be granted such other and further relief as the Court deems just.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs Vandy Hawkins, Willie Pearson and Sylvester Williams were hired by Furnco on the Interlake job respectively, on October 12, October 13, and October 18, 1971. Hawkins and

a white bricklayer were dismissed for their inability to properly perform work. Pearson was dismissed for doing an insufficient amount of work and for his inability to properly perform work.

SECOND AFFIRMATIVE DEFENSE

On the job in question, Defendant had a uniform policy of not hiring bricklayers at the gate and hired persons known to be experienced and qualified bricklayers to perform the work required through the personal knowledge of its Job Superintendent or through referral of such persons. Such hiring practices resulted in employment of approximately 16 per cent of the bricklayers on the job in question being black, and Defendant alleges on information and belief that this percentage is considerably in excess of the percentage of black bricklayers who are members of the local bricklaying union.

THIRD AFFIRMATIVE DEFENSE

Plaintiff William Waters had previously worked under the individual in charge of hiring of bricklayers on the job in question and had been discharged at that time for insubordination. Because of this, Waters was not hired on the job in question.

Respectfully submitted,

FURNCO CONSTRUCTION CORPORATION
By /s/ JOEL H. KAPLAN
Joel H. Kaplan
Its Attorney

SEYFARTH, SHAW, FAIRWEATHER
& GERALDSON
111 West Jackson Boulevard
Chicago, Illinois 60604
(312) 431-9000
April 10, 1974

(Affidavit of service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

WILLIAM WATERS, SYLVESTER WILLIAMS, WILLIE G. PEARSON, VANDY HAWKINS, CURTIS GILMORE, DONALD SAMUELS, ROBERT NEMHARD, and WILLIAM SMITH, *Plaintiffs,* *vs.* FURNCO CONSTRUCTION CORPORATION, *Defendant.*	Civil Action No. 72C 2305

MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT AND FOR LEAVE TO ADD ONE ADDITIONAL PARTY PLAINTIFF

Plaintiffs move this Court for leave to file a First Amended Complaint in this cause and to add one additional party plaintiff and as grounds therefore states that the amendment is necessary to conform the Complaint to the evidence adduced.

/s/ JUDSON H. MINER
Judson H. Miner

DAVIS, MINER, BARNHILL & BRONNER
22 East Huron Street
Chicago, Illinois 60611
Telephone: 751-1170

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

WILLIAM WATERS, SYLVESTER WILLIAMS, WILLIE G. PEARSON, VANDY HAWKINS, CURTIS GILMORE, DONALD SAMUELS, ROBERT NEMHARD and WILLIAM SMITH,
Plaintiffs,
vs.
FURNCO CONSTRUCTION CORPORATION,
Defendant.

Civil Action
No. 72 C 2305

FIRST AMENDED COMPLAINT

Count I

Now come plaintiffs, by their attorney, and allege as follows:

1. This action is brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.* (hereinafter Title VII), and the Civil Rights Act of 1866, 42 U. S. C. § 1981 (hereinafter § 1981), to redress and enjoin unlawful employment practices by the defendant in violation of those statutes. The sum in controversy exclusive of interest and costs exceeds $10,000.

2. This court has jurisdiction under § 706(f) of Title VII, 42 U. S. C. § 2000e—5(f), and 28 U. S. C. §§ 1331 and 1343.

3. The plaintiffs William Waters, Sylvester Williams, Willie G. Pearson, Vandy Hawkins, Curtis Gilmore, Robert Nemhard and William Smith are Negro bricklayers who reside in Chicago, Illinois and are citizens of the United States. Donald Samuels is a Negro bricklayer who, at all times relevant herein, resided in Chicago, Illinois and is a citizen of the United States.

4. Defendant Furnco Construction Corporation (hereinafter Furnco) is a mason contractor that does business in the State of Illinois and in the County of Cook. Furthermore, defendant is an employer within the meaning of Title VII, 42 U. S. C. § 2000e (b) and (h), in that it is an industry affecting commerce and employs more than twenty-five (25) employees.

5. On or about August 1, 1971 defendant Furnco was awarded a contract to do the masonry repair work on the furnaces at Interlake Steel Corp., 10730 South Burley, Chicago, Illinois.

6. Between August 2 and August 25, plaintiffs Waters, Pearson, Hawkins, Samuels, Gilmore, Nemhard and Smith went to the Interlake job site and applied for employment with defendant Furnco. On or about September 13, 1971 plaintiff Williams went to the job site at Interlake Steel Corp., and applied for employment with defendant Furnco.

7. Defendant Furnco hired its first bricklayer on said Interlake Steel job on or about August 26, 1971. Between August 26 and September 15, 1971 defendant Furnco hired approximately fifteen (15) white bricklayers, but not plaintiffs. Additional white bricklayers were subsequently hired.

8. By virtue of the foregoing facts, policies, and practices defendant Furnco has discriminated against Negro bricklayers by denying said Negro bricklayers equal opportunities for employment and retention without regard to race. Defendant's conduct has prevented plaintiffs from making and enforcing employment contracts with the same freedom and on the same basis enjoyed by white bricklayers.

9. Plaintiffs have fully complied with all procedural requirements of Title VII. Timely complaints were filed with both the Illinois Fair Employment Practices Commission and the Equal Employment Opportunity Commission. In letters dated June 20, 1972 the Equal Employment Opportunity Commission advised plaintiffs of their right to sue within ninety (90) days pursuant to § 706 (f-1) of Title VII.

10. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a permanent injunction is the only means for securing adequate relief. Plaintiffs are now suffering and continue to suffer irreparable injury from the defendant's policies, practices, customs and usages as set forth herein.

WHEREFORE, plaintiffs respectfully pray that this Court:

1. Issue a declaratory judgment declaring that defendant's employment policies, practices, customs and usages discriminate against Negro bricklayers in violation of Title VII and § 1981.

2. Permanently enjoin defendant from discriminating on the basis of race in its hiring and employment practices.

3. Order defendant to take affirmative action to reform its employment practices and procedures so as to abolish any vestiges of the discriminatory employment practices heretofore utilized by defendant.

4. Award plaintiffs actual damages for lost wages resulting from defendant's discriminatory policies.

5. Grant plaintiffs punitive damages in the sum of $500,000.00.

6. Grant such other and further relief as this Court deems just, including reasonable attorney's fees.

Count II

Plaintiffs, by their attorney, and allege as follows:

1. Plaintiffs adopt and incorporate herein by reference paragraphs 1 and 2 of Count I.

2. The plaintiffs William Waters, Sylvester Williams, Willie G. Pearson, Vandy Hawkins, Curtis Gilmore, Robert Nemhard and William Smith are Negro bricklayers who reside in Chicago, Illinois and are citizens of the United States. Donald Samuels is a Negro bricklayer who, at all times relevant herein, resided in Chicago, Illinois and is a citizen of the United States.

3. Defendant Furnco Construction Corporation (hereinafter Furnco) is a mason contractor that does business in the State of Illinois and in the County of Cook. Furthermore, defendant is an employer within the meaning of Title VII, 42 U. S. C. § 2000e (b) and (h), in that it is an industry affecting commerce and employs more than twenty-five (25) employees.

4. On or about June 1, 1969, defendant Furnco commenced construction of new blast furnaces at United States Steel's plant at 3426 E. 89th Street.

5. During the course of defendant Furnco's job at United States Steel, employment discrimination charges were filed against Furnco by six Negro bricklayers; namely, Vandy Hawkins, Sylvester Williams, Narcisse Batiste, Raymond Pendarvis, Charles Temple and Percy Wilson.

6. In August, 1970, a hearing was conducted at the Illinois Fair Employment Practices Commission. At that hearing, William Waters and Willie G. Pearson testified for the complaining parties.

7. On March 11, 1971, Narcisse Batiste, Vandy Hawkins, Charles Temple and Percy Wilson filed employment discrimination charges against defendant Furnco in the United States District Court for the Northern District of Illinois. Subsequent thereto, Sylvester Williams was added as a named plaintiff.

8. During the summer of 1971, defendant Furnco initiated settlement discussions with plaintiffs and other bricklayers, through their attorneys, regarding the settlement of various legal and administrative proceedings. These negotiations lasted through September, 1971.

9. During the period of negotiations, plaintiff Smith went to Furnco's Interlake job site with some of the named plaintiffs to seek employment.

10. Defendant Furnco refused to consider for employment at its Interlake job any of the black bricklayers who were participating in the settlement discussions and any bricklayers who

went with them to seek employment, until said negotiations collapsed in late September or early October, 1971.

11. During October, 1971, six of these Negro bricklayers, including plaintiffs Pearson, Hawkins, Williams and Smith herein, were hired by defendant Furnco. However, three of these Negro bricklayers including plaintiffs Pearson and Hawkins were fired within three days of the date they were hired.

12. By virtue of the foregoing facts, policies and practices, defendant Furnco has retaliated against Negro bricklayers who have initiated charges or testified in proceedings brought under Title VII as well as Negro bricklayers who have associated with and sought employment with Negro bricklayers who have initiated or participated in employment discrimination proceedings.

13. Plaintiffs have fully complied with all procedural requirements of Title VII. Timely complaints were filed with both the Illinois Fair Employment Practices Commission and the Equal Employment Opportunity Commission. In letters dated either June 20 and September 19, 1972 the Equal Employment Opportunity Commission advised plaintiffs of their right to sue within ninety (90) days pursuant to § 706(f-1) of Title VII.

14. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a permanent injunction is the only means for securing adequate relief. Plaintiffs are now suffering and continue to suffer irreparable injury from the defendant's policies, practices, customs and usages as set forth herein.

WHEREFORE, plaintiffs respectfully pray that this Court:

1. Issue a declaratory judgment declaring that defendant's employment policies, practices, customs and usages discriminate against Negro bricklayers in violation of Title VII and § 1981.

2. Permanently enjoin defendant from retaliating against Negro bricklayers who have initiated or participated in employment discrimination proceedings before any forum or agency.

3. Order defendant to take affirmative action to reform its employment practices and procedures so as to abolish any vestiges of the discriminatory employment practices heretofore utilized by defendant.

4. Award plaintiffs actual damages for lost wages resulting from defendant's discriminatory policies.

5. Grant plaintiffs punitive damages in the sum of $500,000.00.

6. Grant such other and further relief as this Court deems just, including reasonable attorney's fees.

/s/ JUDSON H. MINER
Judson H. Miner
Attorney for Plaintiffs

DAVIS, MINER, BARNHILL
& BRONNER
22 East Huron Street
Chicago, Illinois 60611
Telephone: 751-1170

(Affidavit of service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

WILLIAM WATERS, SYLVESTER WILLIAMS, WILLIE G. PEARSON, VANDY HAWKINS, CURTIS GILMORE, DONALD SAMUELS, ROBERT NEMHARD, and WILLIAM SMITH,
Plaintiffs,
vs.
FURNCO CONSTRUCTION CORPORATION,
Defendant.

Civil Action
No. 72 C 2305

ANSWER TO FIRST AMENDED COMPLAINT

Now Comes Defendant, Furnco Construction Corporation, by its Attorneys, Seyfarth, Shaw, Fairweather & Geraldson, and for its Answer to Plaintiffs' First Amended Complaint, states as follows:

Count I

1-2. The Defendant admits the allegations contained in paragraphs 1 and 2 of the First Amended Complaint, except that Defendant is without knowledge and information sufficient to form a belief as to whether the sum in controversy exclusive of interest and costs exceeds $10,000. In addition, it denies each and every allegation that it violated any law or committed any unlawful employment practices and denies that this Court has jurisdiction to adjudicate the claims of any of Plaintiffs who have not fully complied with the procedural requirement necessary to bring this cause of action.

3. The Defendant admits that Plaintiffs William Waters, Sylvester Williams, Willie G. Pearson, Vandy Hawkins and William Smith are Negro bricklayers, but as to each and every other allegation contained in paragraph 3 of Plaintiffs' First Amended Complaint, Defendant is without knowledge and information sufficient to form a belief as to the truth of such allegations.

4. The Defendant admits the allegations contained in paragraph 4 of Plaintiffs' First Amended Complaint, except that while Defendant has done business in the State of Illinois and in the County of Cook, it does not presently have any business in the State of Illinois and in the County of Cook.

5. The Defendant admits the allegations contained in paragraph 5 of Plaintiffs' First Amended Complaint.

6. The Defendant denies each and every allegation contained in paragraph 6 of Plaintiffs' First Amended Complaint.

7. The Defendant admits that it hired its first bricklayer on said Interlake Steel job on or about August 26, 1971. Between August 26 and September 15, 1971, the Defendant hired approximately 12 bricklayers, of whom 2 were black, but not Plaintiffs. Subsequently, both additional white and black bricklayers, including many of Plaintiffs, were hired.

8. The Defendant denies each and every allegation contained in paragraph 8 of Plaintiffs' First Amended Complaint.

9. The Defendant denies each and every allegation contained in paragraph 9 of Plaintiffs' First Amended Complaint.

10. The Defendant denies each and every allegation contained in paragraph 10 of Plaintiffs' First Amended Complaint.

11. The Defendant denies each and every allegation in Count I of Plaintiffs' First Amended Complaint not herein admitted, controverted or specifically denied.

Wherefore, Defendant, Furnco Construction Corporation, denies that Plaintiffs are entitled to any of the relief requested, demands that Count I of Plaintiffs' First Amended Complaint

be dismissed and respectfully prays that Defendant be awarded its costs, including reasonable attorney's fees, and that it be granted such other and further relief as the Court deems just.

Count II

1-3. Defendant adopts and incorporates herein by reference its Answer to paragraphs 1, 2, and 3 of Count I.

4. Defendant admits the allegations contained in paragraph 4 of Plaintiffs' First Amended Complaint.

5. Defendant admits the allegations contained in paragraph 5 of Plaintiffs' First Amended Complaint.

6. Defendant admits the allegations contained in paragraph 6 of Plaintiffs' First Amended Complaint.

7. Defendant admits the allegations contained in paragraph 7 of Plaintiffs' First Amended Complaint.

8. Defendant admits the allegations contained in paragraph 8 of Plaintiffs' First Amended Complaint.

9. Defendant denies each and every allegation contained in paragraph 9 of Plaintiffs' First Amended Complaint.

10. Defendant denies each and every allegation contained in paragraph 10 of Plaintiffs' First Amended Complaint.

11. Defendant admits the allegations contained in paragraph 11 of Plaintiffs' First Amended Complaint.

12. Defendant denies each and every allegation contained in paragraph 12 of Plaintiffs' First Amended Complaint.

13. Defendant denies each and every allegation contained in paragraph 13 of Plaintiffs' First Amended Complaint.

14. Defendant denies each and every allegation contained in paragraph 14 of Plaintiffs' First Amended Complaint.

15. The Defendant denies each and every allegation in Count II of Plaintiffs' First Amended Complaint not herein admitted, controverted or specifically denied.

Wherefore, Defendant, Furnco Construction Corporation, denies that Plaintiffs are entitled to any of the relief requested, demands that Count II of Plaintiffs' First Amended Complaint be dismissed and respectfully prays that Defendant be awarded its costs, including reasonable attorney's fees and that it be granted such other and further relief as the Court deems just.

FIRST AFFIRMATIVE DEFENSE TO COUNTS I AND II.

Plaintiff Vandy Hawkins, Willie Pearson, Sylvester Williams, and William Smith were hired by Furnco on the Interlake job respectively, on October 12, October 13, October 18, and October 12, 1971. Hawkins and a white bricklayer were dismissed for their inability to properly perform work. Pearson was dismissed for doing an insufficient amount of work and for his inability to properly perform work.

SECOND AFFIRMATIVE DEFENSE TO COUNTS I AND II.

On the job in question, Defendant had a uniform policy of not hiring bricklayers at the gate and hired persons known to be experienced and qualified bricklayers to perform the work required through the personal knowledge of its Job Superintendent or through referral of such persons. Such hiring practices resulted in employment of approximately 16 percent of the bricklayers on the job in question being black, and Defendant alleges on information and belief that this percentage is considerably in excess of the percentage of black bricklayers who are members of the local bricklaying union.

THIRD AFFIRMATIVE DEFENSE TO COUNTS I AND II.

Plaintiff William Waters had previously worked under the individual in charge of hiring of bricklayers on the job in ques-

tion and had been discharged at that time for insubordination. Because of this, Waters was not hired on the job in question.

Respectfully submitted,

FURNCO CONSTRUCTION CORPORATION
By /s/ JOEL H. KAPLAN
Joel H. Kaplan
Its Attorney

SEYFARTH, SHAW, FAIRWEATHER
& GERALDSON
111 West Jackson Boulevard
Chicago, Illinois 60604
(312) 431-9000

April 15, 1974

(Affidavit of service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

WILLIAM WATERS, SYLVESTER WILLIAMS, WILLIE G. PEARSON, VANDY HAWKINS, CURTIS GILMORE, DONALD SAMUELS, ROBERT NEMHARD, and WILLIAM SMITH, *Plaintiffs,* *vs.* FURNCO CONSTRUCTION CORPORATION, *Defendant.*	No. 72 C 2305

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Findings of Fact and Conclusions of Law of the District Court, entered on February 10, 1975, appear in Appendix C of the Petition for Writ of Certiorari at pages A12-A22.

IN THE UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

WILLIAM WATERS, SYLVESTER WILLIAMS, WILLIE G. PEARSON, VANDY HAWKINS, CURTIS GILMORE, DONALD SAMUELS, ROBERT NEMHARD, and WILLIAM SMITH, *Plaintiffs,* *vs.* FURNCO CONSTRUCTION CORPORATION, *Defendant.*	No. 72 C 2305

JUDGMENT ORDER

Judgment is entered in favor of Defendant Furnco Construction Corporation and against Plaintiffs William Waters, Sylvester Williams, Willie G. Pearson, Vandy Hawkins, Curtis Gilmore, Donald Samuels, Robert Nemhard and William Smith and each of them on both Counts of the Amended Complaint. Fed. R. Civ. Pro. 58.

Case dismissed.

/s/ RICHARD B. AUSTIN
Judge, United States District Court

Dated: February 10, 1975

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

WILLIAM WATERS, SYLVESTER WILLIAMS, WILLIE G. PEARSON, VANDY HAWKINS, CURTIS GILMORE, DONALD SAMUELS, ROBERT NEMHARD, and WILLIAM SMITH, *Plaintiffs,* *vs.* FURNCO CONSTRUCTION CORPORATION, *Defendant.*	No. 72 C 2305

NOTICE OF APPEAL

Notice is hereby given that William Waters, et al., plaintiffs in this cause, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the Judgment Order entered by Judge Richard B. Austin in this action on February 10, 1975.

/s/ JUDSON H. MINER
Judson H. Miner
Attorney for Plaintiffs

DAVIS, MINER & BARNHILL
14 West Erie Street
Chicago, Illinois 60610
Telephone: 751-1170

Dated: March 10, 1975

(Affidavit of service omitted in printing)

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

No. 75-1347

WILLIAM WATERS, SYLVESTER WILLIAMS, WILLIE G. PEARSON, VANDY HAWKINS, CURTIS GILMORE, DONALD SAMUELS ROBERT NEMHARD, and WILLIAM SMITH,
Plaintiffs-Appellants,

vs.

FURNCO CONSTRUCTION CORPORATION,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 72-C-2305

RICHARD B. AUSTIN, *Judge.*

Argued October 30, 1975—Decided March 8, 1977

Before FAIRCHILD, *Chief Judge,* PELL, *Circuit Judge,* and CHRISTENSEN, *Senior District Judge.**

The decision of the United States Court of Appeals for the Seventh Circuit, entered on March 8, 1977, appears in Appendix A of the Petition for Writ of Certiorari at pages A1-A10.

* Senior District Judge A. Sherman Christensen of the District of Utah sitting by designation.

OPINION BY JUDGE FAIRCHILD

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

March 8, 1977

Before

HON. THOMAS E. FAIRCHILD, *Chief Judge*
HON. WILBUR F. PELL, JR., *Circuit Judge*
HON. A. SHERMAN CHRISTENSEN, *Senior District Judge**

WILLIAM WATERS, ET AL.,
Plaintiffs-Appellants,

No. 75-1347 *vs.*

FURNCO CONSTRUCTION CORPORATION,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 72-C-2305

Richard B. Austin, Judge

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this

* Honorable A. Sherman Christensen, Senior Judge, United States District Court for the District of Utah, sitting by designation.

cause appealed from be, and the same is hereby, AFFIRMED IN PART, REVERSED IN PART, AND REVERSED AND REMANDED IN PART, in accordance with the opinion of this court filed this date. Costs on the appeal are allowed to plaintiffs.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

June 8, 1977

Before

HON. THOMAS E. FAIRCHILD, *Chief Judge*
HON. WILBUR F. PELL, JR., *Circuit Judge*
HON. A. SHERMAN CHRISTENSEN, *Senior District Judge*

WILLIAM WATERS, ET AL.,
Plaintiffs-Appellants,

No. 75-1347 *vs.*

FURNCO CONSTRUCTION CORPORATION,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 72-C-2305

Richard B. Austin, Judge

The decision of the United States Court of Appeals for the Seventh Circuit denying Furnco's Petition for Rehearing with a Suggestion for Rehearing En Banc, entered June 8, 1977, appears in Appendix B of the Petition for Writ of Certiorari at page A11.